

MARIO N. ALIOTO, ESQ. (56433)
LAUREN C. CAPURRO, ESQ. (241151)
TRUMP, ALIOTO, TRUMP & PRESCOTT, LLP
2001 Union Street, Suite 482
San Francisco, CA 94123
Telephone: (415) 563-7200
Facsimile: (415) 346-0679
E-mail: malioto@tatp.com
lauren russell@tatp.com

Lead Counsel for the Indirect-Purchaser Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OKLAND DIVISION

IN RE CATHODE RAY TUBE (CRT)
ANTITRUST LITIGATION

) Master File No. 4:07-cv-5944-jst

) MDL No. 1917

This Document Relates to:

) **DECLARATION OF GERARD A. DEVER**
) **IN SUPPORT OF**

Indirect-Purchaser Class Action

) **INDIRECT PURCHASER PLAINTIFFS'**
) **NOTICE OF MOTION AND MOTION *IN***
) ***LIMINE* NO. 5:**

) **TO LIMIT IRICO DEFENDANTS'**
) **DEPOSITION DESIGNATIONS**
) **PRESENTED IN PLAINTIFFS' CASE TO**
) **REASONABLE CROSS AND TO**
) **EXCLUDE UNRELATED**
) **DESIGNATIONS**

) Hearing Date: December 15, 2023

) Time: 2:00 p.m.

) Courtroom: Courtroom 6 – 2nd Floor

) The Honorable Jon S. Tigar

1 I, Gerard A. Dever, hereby declare and state as follows:

2 1. I am a member of the law firm Fine, Kaplan and Black, R.P.C., counsel for the
3 Indirect Purchaser Plaintiffs in the above-captioned action currently pending in the U.S. District
4 Court for the Northern District of California. I am a member in good standing of the bar of the
5 Commonwealth of Pennsylvania and I am admitted *pro hac vice* to practice before this Court. I
6 submit this Declaration in support of Plaintiffs' Motion *in Limine* No. 5: to limit Irico Defendants'
7 deposition designations presented in Plaintiffs' case to reasonable cross and to exclude unrelated
8 designations.

9 2. Attached hereto as **Exhibit A** is a true and correct copy of an excerpt of the
10 Transcript of Motion *In Limine* Conference in *In re Urethane Antitrust Litig.*, No. 04-1616 (D.
11 Kan.), with the relevant portions highlighted.

12 I declare under penalty of perjury under the laws of the United States that the foregoing is
13 true and correct.

14 Executed on August 11, 2023, in Philadelphia, Pennsylvania.

15
16 /s/ Gerard A. Dever

17 Gerard A. Dever

18 Fine, Kaplan and Black, R.P.C.

19 One South Broad Street, 23rd Floor

20 Philadelphia, PA 19107

21 Telephone: (215) 567-6565

22 Facsimile: (215) 568-5872

23 Email: gdever@finekaplan.com

24 *Counsel for Indirect Purchaser Plaintiffs*

EXHIBIT A

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF KANSAS

3 IN RE:

4
5 URETHANE ANTITRUST LITIGATION

CASE NO. 04-1616

6
7 TRANSCRIPT OF MOTION IN LIMINE CONFERENCE

8 before

HONORABLE JOHN W. LUNGSTRUM

9 on

10 JANUARY 9, 2013

11 APPEARANCES

12 For the Class
13 Plaintiffs:

Joseph Goldberg
Freedman, Boyd, Hollander, Goldberg
& Ives PA
20 First Plaza, Suite 700
Albuquerque, NM 87102

16 Roberta D. Liebenberg
17 Fine, Kaplan and Black, RPC
One South Broad Street, Suite 2300
Philadelphia, PA 19107

19 Michael J. Guzman
20 Kellogg, Huber, Hansen, Todd, Evans
& Figel, PLLC
Sumner Square
21 1615 M Street, NW, Suite 400
Washington, DC 20036-3209

23 Kit A. Pierson
24 Cohen, Milstein, Sellers & Toll
West Tower - Ste. 500
1100 New York Ave., N.W.
25 Washington, DC 20005-3934

REBECCA S. RYDER, CCR, RMR
UNITED STATES COURT REPORTER
913-735-2334

1 I mean that all objections are overruled unless I
2 specifically state otherwise. In other words, there
3 may have been multiple objections raised. If I say
4 overruled, I'm not going to deal with each one of
5 them separately. When I sustain an objection as --
6 this is the term I will use, beyond the scope, I'm
7 using that phrase as shorthand for a combination of
8 reasons for sustaining objections which plaintiffs
9 style as outside the scope. Those reasons include
10 not only literal determinations of outside the scope
11 of direct examination by plaintiffs but also Rule 403
12 considerations of confusion, delay, and
13 cumulativeness and the court's inherent power to
14 control the presentation of evidence. But beyond the
15 scope is my shorthand for that.

16 While there is no exact rule of thumb that
17 either requires or helps to determine proportionality
18 between direct and cross examination, I do think that
19 the court can, and should, be cognizant of the order
20 of presentation of proof by which the party who bears
21 the burden of persuasion also enjoys the advantage of
22 primacy in presenting its evidence. With deposition
23 testimony, unlike live testimony, the party who seeks
24 to present evidence which might arguably fall within
25 the scope of direct if liberally defined but which is

1 lengthy and potentially confusing in the context of
2 the plaintiffs' presentation does not lose the
3 opportunity of spontaneity or timeliness which is
4 involved in live testimony, where if you don't ask
5 the question at that time, it may get away from you
6 for a number of different reasons. The out-of-scope
7 testimony is available to be presented in the
8 parties' case-in-chief, and the momentary potential
9 for effective discrediting is not lost in the same
10 way as with a live witness. I believe that is
11 particularly so in this particular case.

12 Nor do we have a situation, as we would with a
13 live witness, where a witness might be inconvenienced
14 by having to return to the stand where we have a
15 video deposition involved. With a live witness I may
16 be more liberal in my view about what is beyond the
17 scope, as I have used that term, but with these
18 deposition transcripts I think that's a different
19 issue. Moreover, delay may be prevented because the
20 proponent of the evidence in this case -- by and
21 large, Dow -- may conclude it is unnecessary on
22 reflection and not offer the volume of evidence in
23 its case-in-chief that it might like to have inserted
24 in the plaintiffs' case-in-chief. It's a decision
25 Dow has to make as a strategic or tactical matter.